

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Appeals for
the Federal Circuit and the United
States Court of International Trade

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No. 39

This issue contains:

U.S. Customs Service

T.D. 87-106 Through 87-118

General Notice

Proposed Rulemaking

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Logistics Management, Printing and Distribution Branch, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

U.S. Customs Service

Treasury Decisions

(T.D. 87-106)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:		
July 1-2, 1987		\$.007273
July 3, 1987 .....		.007231
South Korea won:		
July 1, 1987 .....		.001230
July 2-3, 1987 .....		.001232
Taiwan N.T. dollar:		
July 1, 1987		N/A
July 2-3, 1987 .....		.032123

(LIQ-03-01 S:COM CIE)

Dated: August 3, 1987.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 87-107)

FOREIGN CURRENCIES

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Greece drachma:	
July 6, 1987	\$.007231
July 7, 1987007241
July 8, 1987007225
July 9, 1987007228
July 10, 1987 .....	.007220
South Korea won:	
July 6, 1987 .....	.001232
July 7-9, 1987 .....	.001231
July 10, 1987 .....	.001232
Taiwan N.T. dollar:	
July 6, 1987 .....	.032113
July 7, 1987 .....	.032134
July 8-10, 1987 .....	.032123

(LIQ-03-01 S:COM CIE)

Dated: August 3, 1987.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 87-108)

FOREIGN CURRENCIES

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others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:		
July 13, 1987	.....	\$.007212
July 14, 1987	.....	.007189
July 15, 1987	.....	.007241
July 16, 1987	.....	.007194
July 17, 1987	.....	.007107
South Korea won:		
July 13-17, 1987	.....	.001232
Taiwan N.T. dollar:		
July 13-15, 1987	.....	.032123
July 16-17, 1987	.....	.032113

(LIQ-03-01 S:COM CIE)

Dated: August 3, 1987.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 87-109)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST

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Greece drachma:		
July 20, 1987	\$.007087
July 21, 1987007097
July 22, 1987007115
July 23, 1987	.....	.007133
July 24, 1987	.....	.007143
South Korea won:		
July 20-24, 1987	.....	.001232

Taiwan N.T. dollar:

July 20-21, 1987 .....	.032123
July 22, 1987 .....	.032134
July 23, 1987 .....	.032123
July 24, 1987 .....	.032123

(LIQ-03-01 S:COM CIE)

Dated: August 3, 1987.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 87-110)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST

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Greece drachma:

July 27, 1987	\$.007148
July 28, 1987007125
July 29, 1987007128
July 30, 1987007143
July 31, 1987007133

South Korea won:

July 27-31, 1987001232
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Taiwan N.T. dollar:

July 27, 1987032113
July 28, 1987032123
July 29, 1987032175
July 30, 1987 .....	.032248
July 31, 1987 .....	.032331

(LIQ-03-01 S:COM CIE)

Dated: August 3, 1987.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 87-111)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST

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Greece drachma:	
August 3, 1987	\$.007115
August 4, 1987007040
August 5-6, 1987007045
August 7, 1987 .....	.007022
South Korea won:	
August 3-4, 1987 .....	.001232
August 5, 1987 .....	.001231
August 6, 1987 .....	.001232
August 7, 1987 .....	.001231
Taiwan N.T. dollar:	
August 3, 1987 .....	.032489
August 4, 1987 .....	.032573
August 5, 1987 .....	.032648
August 6, 1987 .....	.032733
August 7, 1987 .....	.032819

(LIQ-03-01 S:COM CIE)

Dated: September 1, 1987.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 87-112)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST

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Greece drachma:	
August 10, 1987	\$.006969
August 11, 1987006971
August 12, 1987006995
August 13, 1987 .....	.007000
August 14, 1987 .....	.007050
South Korea won:	
August 10-14, 1987 .....	.001231
Taiwan N.T. dollar:	
August 10, 1987 .....	.032949
August 11, 1987 .....	.033003
August 12, 1987 .....	.033047
August 13, 1987 .....	.033091
August 14, 1987 .....	.033113

(LIQ-03-01 S:COM CIE)

Dated: September 1, 1987.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 87-113)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and

others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:

August 17, 1987	\$.007050
August 18, 1987 .....	.007120
August 19, 1987 .....	.007151
August 20, 1987 .....	.007171
August 21, 1987 .....	.007218

South Korea won:

August 17-18, 1987 .....	.001231
August 19-21, 1987 .....	.001232

Taiwan N.T. dollar:

August 17, 1987 .....	.033156
August 18, 1987 .....	.033167
August 19, 1987 .....	.033167
August 20, 1987 .....	.033167
August 21, 1987 .....	.033179

(LIQ-03-01 S:COM CIE)

Dated: September 1, 1987.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 87-114)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:

August 24, 1987	\$.007239
August 25, 1987 .....	.007218
August 26, 1987 .....	.007199
August 27, 1987 .....	.007244
August 28, 1987 .....	.007233

South Korea won:

August 24-25, 1987 .....	.001233
August 26-27, 1987 .....	.001232
August 28, 1987 .....	.001233

Taiwan N.T. dollar:

August 24-25, 1987 .....	.033167
August 26-27, 1987 .....	.033179
August 28, 1987 .....	.033167

(LIQ-03-01 S:COM CIE)

Dated: September 1, 1987.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 87-115)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:

August 31, 1987	\$.007254
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South Korea won:

August 31, 1987001232
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Taiwan N.T. dollar:

August 31, 1987033156
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(LIQ-03-01 S:COM CIE)

Dated: September 1, 1987.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 87-116)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATE

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 87-90 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Denmark kroner:

August 11, 1987 \$1.37315

(LIQ-03-01 S:COM CIE)

Dated: September 1, 1987.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

19 CFR Part 101

(T.D. 87-117)

CHANGE IN THE CUSTOMS SERVICE FIELD
ORGANIZATION—PORT HURON, MICHIGAN

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to change the Customs field organization by extending the geographic limits of the port of entry of Port Huron, Michigan. Currently, Customs officers assigned to the port provide service at many locations which are outside the existing port limits. This expansion will better serve the public by including several locations routinely requiring Customs service within the official port limits.

EFFECTIVE DATE: October 19, 1987.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Office of Inspection and Control, (202-566-9425).

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, by notice published in the Federal Register on April 23, 1987 (52 FR 13473), Customs proposed to amend § 101.3, Customs Regulations (19 CFR 101.3), by extending the geographic limits of the port of entry of Port Huron, Michigan, located in the Detroit, Michigan, Customs District in the North Central Region.

The proposed expanded port limits set forth in that document, and as more accurately described in a subsequent notice published on May 12, 1987 (52 FR 17770), are as follows:

All of the territory encompassing the cities of Port Huron, Marysville, St. Clair, Marine City and Algonac and the Townships of Port Huron, Fort Gratiot, Kimball, St. Clair, East China and the portion of Cottrellville and Clay Townships east of and including Highway M-29, all in the State of Michigan.

No comments were received in response to the notice proposing the expansion. After further review of the matter, Customs has determined that it is in the public interest to adopt the expansion as proposed. The expansion of the geographic limits of Port Huron will permit normal rotation of inspectors to St. Clair, Marine City, and Algonac as they are now assigned to other areas within the existing port limits. Importers within the expanded port limits will no longer be billed mileage charges, which have been minimal. The expansion will result in no additional workload and will require no additional personnel.

Algonac and Marine City are currently listed in § 101.4(c), Customs Regulations (19 CFR 101.4(c)), as Customs stations. As those two locations are now encompassed by the expanded limits of Port Huron, they are being removed from the list in § 101.4(c).

AUTHORITY

This change is made under the authority vested in the President by § 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp. Ch. II) and pursuant to authority provided by Treasury Department Order No. 101-5, dated February 17, 1987 (52 FR 6282).

EXECUTIVE ORDER 12291 AND REGULATORY FLEXIBILITY ACT

Because this document relates to agency organization it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by that E.O. are not required. Similarly, this document is not subject to the regulatory analysis and other requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Customs routinely establishes and expands Customs ports of entry and Customs stations throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this amendment may have a limited effect upon some small entities in the area affected, it is not expected to be significant because establishing and expanding port limits or stations in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

DRAFTING INFORMATION

The principal author of this document was John Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 101

Customs duties and inspection, Imports, Organization and functions (Government agencies).

AMENDMENTS TO THE REGULATIONS

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101, Customs Regulations (19 CFR Part 101), continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1, 66, 1202 (Gen. Hdnote. 11), 1624, Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

2. To reflect this change, the list of Customs regions, districts, and ports of entry in § 101.3(b) is amended by removing "53576" from the listing for Port Huron in the column headed "Ports of entry", in the Detroit, Michigan, Customs District of the North Central Region, and inserting in its place, "87-117".

3. The list of Customs districts, stations, and ports of entry having supervision, in § 101.4(c) is amended as follows:

By removing "Algonac, Mich." and "Marine City, Mich." from the column headed "Customs stations" and by removing from the same two lines, "Port Huron" from the column headed "Port of entry having supervision" in the Detroit, Michigan, Customs district.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: August 3, 1987.

FRANCIS A. KEATING II,
Assistant Secretary of the Treasury.

(T.D. 87-118)

This notice limits the decision in Slip Op. 87-37, decided March 31, 1987, holding certain garments classifiable as nightwear.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

In *St. Eve International v. United States*, Slip Op. 87-37 (Ct. Int'l Trade, decided March 31, 1987), the court held that the Customs Service had improperly excluded from entry, for lack of dress, shirt, or blouse visas, twenty-five styles of women's cotton knit garments. None is described in great detail, or identified by style number, in the opinion. The court held the merchandise classifiable as nightwear garments as claimed by the plaintiff and entitled to entry under textile quota category 351, cotton pajamas and other nightwear.

The Textile Category Guidelines, C.I.E. 36/79, developed to facilitate statistical classification under the textile categories established for administration of the Arrangement Regarding International Trade in Textiles (the Multifiber Arrangement or MFA), define nightwear as "various articles worn for sleeping." Further, in *Mast Industries v. United States*, 9 CIT 549, Slip Op. 85-114 (decided October 28, 1985), *aff'd*, 786 F.2d 1144,—Fed. Cir. (T)—(1986), the Court of International Trade, in deciding that a certain garment was nightwear, and therefore not classifiable as a shirt, noted the definition of nightclothes as "garments to be worn to bed. It is the position of the Customs Service that these definitions limit the scope of the statistical provisions for nightwear to garments that are strictly nightwear and preclude classification thereunder of garments of types also advertised, sold, and used as tops for pants or skirts, as dresses, as beach cover-ups, or for other non-sleep purposes.

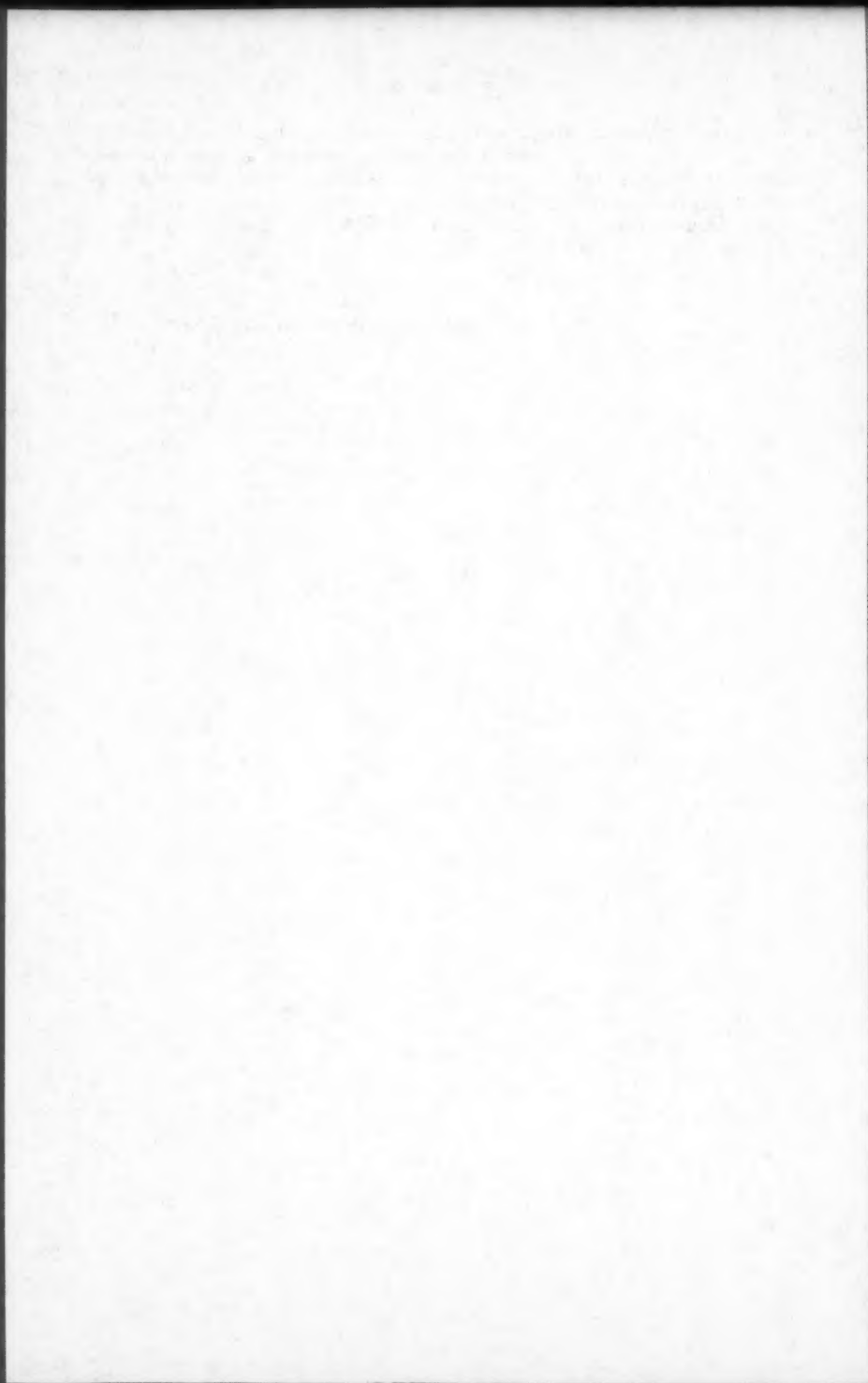
On July 31, 1986, the United States and fifty-three other textile trading nations concluded negotiations to continue the MFA for an additional five years. The Customs Service has been charged with acting on the recommendation of the Committee for the Implementation of Textile Agreements to carry out all agreements and arrangements entered into by the United States providing for orderly marketing of textile products, pursuant to authority delegated to the President by Section 204 of the Agricultural Act of 1956, 76 Stat. 104, as amended, 7 U.S.C. 1854. Part 132 of the Customs Regulations provides that "terms of a Presidential proclamation, Executive order, or legislative enactment establishing a quota, and the regulations implementing the quota, must be strictly complied with." 19 CFR § 132.2(c). This section means that both the quantitative limits negotiated with foreign countries for textile quota categories, and the type of merchandise allowed under each category, is strictly circumscribed. Thus, restricting importations of apparel

under the nightwear categories to garments to be worn to bed conforms with the purpose behind the quotas. To allow garments of types advertised and sold as sportswear to be classified as nightwear would defeat the purpose of negotiated agreements.

Accordingly, the decision in Slip Op. 87-37 will be applied only to the merchandise before the court.

Date: September 14, 1987.

MICHAEL H. LANE,
Acting Commissioner of Customs.



U.S. Customs Service

General Notice

CSD 81-3; CLARIFICATION OF RULING

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice clarifies a ruling issued as CSD 81-3.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Miscellaneous Penalties Branch, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-5746).

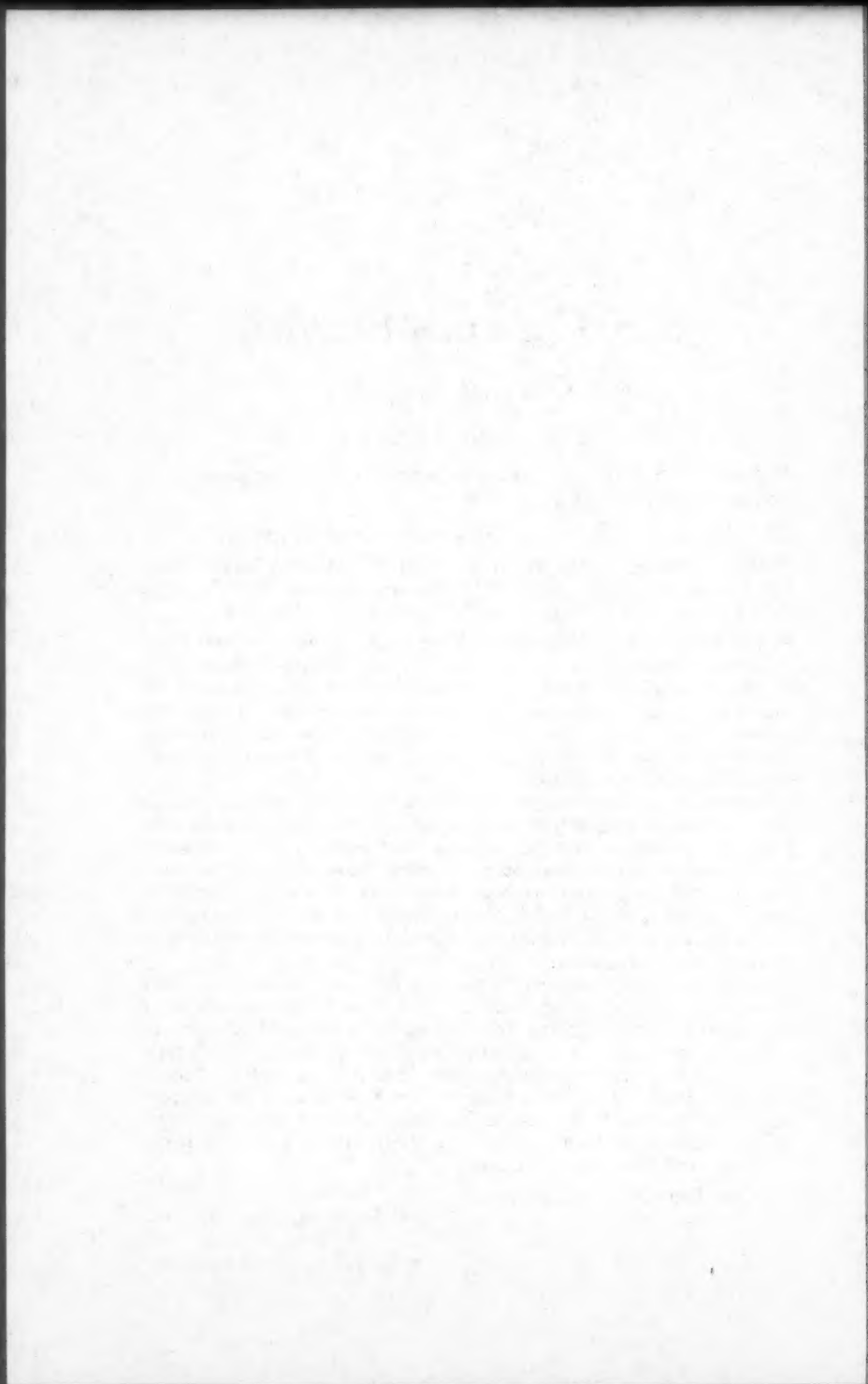
SUPPLEMENTARY INFORMATION: Notice is given to clarify an issue with respect to a ruling published as CSD 81-3. Said ruling verified the right of sureties to petition for relief from claims for liquidated damages assessed against their bond principals. It also considered whether, as a matter of general policy, the district director should routinely provide to the surety copies of the entry upon which the claim was based.

In the body of the ruling, it was stated that Customs must provide copies of bonds and entries to sureties who request them. By contrast, the holding of the ruling found that a surety who is a party-in-interest to a liquidated damages case "may be furnished with copies of the entry upon request and at the prevailing charge for providing such service." This discretionary language in the holding of the ruling is inconsistent with mandatory language included in the body of the decision.

There is no requirement in the Customs laws to provide these documents. The Notice of Claim for Liquidated Damages issued in each case affords sufficient information so as to enable a party-in-interest to prepare a petition for relief. Customs should not perform clerical document retrieval functions as a matter of routine. Accordingly, through this Notice we clarify CSD 81-3 so as to make provision of documents to a surety a discretionary act by the district director of Customs. As a matter of policy, they will not be provided in the everyday course of business.

Dated: September 9, 1987.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.



U.S. Customs Service

Proposed Rulemaking

19 CFR Part 113

PROPOSED CUSTOMS REGULATIONS AMENDMENTS RELATING TO SURETIES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to provide that a continuous importation and entry bond secured by a corporate surety may only be filed with Customs under cover of a letter signed by an authorized officer or agent of that surety. Such an amendment would protect the Government from unnecessary delays in receiving payment from sureties of an importer's liabilities for which the surety is also responsible, when the surety denies liability because it claims to have no record of the bond upon which the demand is made. It also would guarantee that sureties have a reliable data base concerning the amount of bonds they have outstanding, enabling them to make more intelligent decisions regarding management of those potential liabilities. The document also proposes that continuous importation and entry bonds secured by corporate sureties be filed at the Customs National Finance Center to increase the efficiency and integrity of the information input in Customs Automated Commercial System.

DATE: Comments must be received on or before November 17, 1987.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2324, Washington, D.C. 20229 (202-566-8237).

FOR FURTHER INFORMATION CONTACT: Bond Aspects: William Lawlor, Drawback and Bonds Division, (202-566-5856).

Operational Aspects: Robert J. Koval, Commercial Compliance Division (202-566-2345).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part 113, Customs Regulations (19 CFR Part 113), sets forth a description of the various bonds used by the Customs Service and the general requirements applicable to Customs bonds. It contains the general authority and powers of the Commissioner of Customs to require bonds, the general and special bond requirements which must be met by either a principal or a surety, requirements concerning the production of documents, and the authority and manner of assessing liquidated damages for violations of the conditions of bonds, and of cancelling the bond or charges against a bond.

Pursuant to T.D. 84-213, published in the Federal Register (49 FR 41152) on October 19, 1984, one standardized bond form covers all the situations for which bonds may be issued (excluding special use bonds for specific situations). This standardized bond can be used either as a single transaction bond or a continuous bond. A single transaction bond is used for one transaction at a specific port. A continuous bond is used to secure multiple transactions or imports through more than one port. Only one continuous bond for a particular activity will be authorized for each principal. A continuous bond is in effect until Customs is notified by either party to the bond contract that the bond is terminated. Pursuant to § 113.27, Customs Regulations (19 CFR 113.27), the written notification of termination must be transmitted to Customs in a reasonable time period before the termination date. Although bond renewal premium payment procedures between the principal and surety must be made, there is no need to annually refile a continuous bond with Customs.

All bonds require security. They can be secured by an approved corporate or individual surety which gives assurance against default of the bond, or by cash or certain types of Government obligations. Distinctions between the different kinds of sureties are set forth in §§ 113.30 through 113.40, Customs Regulations (19 CFR 113.30-113.40).

Most bonds are issued through Customs brokers. Generally, a broker issues bonds either under a grant of power of attorney from a corporate surety or by means of having a supply of a corporate surety's bonds in its possession that have been pre-executed by the surety by means of a facsimile seal and signature. Because some brokers do not always report the fact that they have issued a bond for a particular importer to the corporate surety, the corporate surety is sometimes unaware that it is liable on a particular entry for a particular importer. In these situations, when Customs bills a corporate surety for payment on a bond, the surety, to verify its liability, frequently requests copies of the bond and entry documents from Customs. This causes delay in payment of the importer's liabilities to Customs. Also, in some instances, it is discovered that bills

thought to be the obligation of one corporate surety are actually the obligation of a different corporate surety.

This control problem occurs mostly with continuous bonds secured by corporate sureties. Single entry bonds relate to only one transaction and the bond remains as part of the transaction papers. Accordingly, questions as to who is liable as the surety on a particular single entry bond usually do not arise. Likewise, the question of who is liable on the bond generally does not arise when a bond is filed by an individual surety or is secured by cash or a Government obligation.

In its continuing efforts to simplify transactions between Customs, brokers, the importing public, and corporate sureties, and to increase the efficiency and integrity of its computerized bond system, Customs is proposing to amend Part 113, Customs Regulations (19 CFR Part 113), to create a procedure providing corporate sureties with accurate information regarding outstanding continuous bonds. Except for conforming changes relating to individual sureties and deposits of cash or Government obligations in lieu of surety, this document proposes a change regarding only corporate sureties.

Customs is proposing to amend § 113.12, Customs Regulations (19 CFR 113.12), to require that when a continuous basic importation and entry bond is filed that is secured by a corporate surety, a cover letter signed by an authorized agent or officer of the surety attesting to the fact that a copy of the bond is on file with the surety or its claim-handling agent, be submitted to Customs with the bond.

This will guarantee that corporate sureties are aware of bonds on which they are the surety. They will then have a reliable data base concerning their outstanding bonds, permitting them to make more intelligent decisions regarding management of those potential liabilities. This will also protect Customs from unnecessary delays in payment due to denial of liability by sureties who are uncertain that they are responsible for an importer's liabilities because they have no record of the bond for which they are being billed.

In addition, Customs is proposing that basic importation and entry (I&E) continuous bonds secured by corporate sureties be directly filed at the Customs National Finance Center in Indianapolis, Indiana and that other continuous bonds be forwarded to the National Finance Center by the district director or regional commissioner who approves them. Currently, continuous bonds must be filed with the district director unless they are bonds relating to the payment of an erroneous drawback payment. The latter bonds are now filed with the appropriate regional commissioner. Since all continuous I&E bonds secured by corporate sureties will be directly filed at the National Finance Center rather than with district directors or regional commissioners, it is proposed that mandatory minimum amounts of \$100,000 be set for continuous I&E bonds filed by corporate sureties.

To increase the efficiency and integrity of the information input into the Automated Commercial System (ACS), Customs is centralizing the location for the filing of continuous bonds secured by corporate sureties. A centralized system will help to reduce the volume of paper flow between Customs and corporate sureties.

CONFORMING AMENDMENTS

Section 113.35, Customs Regulations (19 CFR 113.35), now states that it is the responsibility of the district director to determine whether an individual surety is financially responsible. This is not consistent with § 113.11, Customs Regulations (19 CFR 113.11), as now worded, or as this document proposes to amend § 113.12, that a bond relating to repayment of an erroneous drawback payment shall be filed with regional commissioner for approval. Accordingly, this document proposes to amend § 113.35 to make it consistent with § 113.12 by deleting the words "district director" whenever it appears in § 113.35(d) and (e), and substituting the words "appropriate Customs officer".

In addition, numerous other conforming changes are proposed throughout Part 113 to reflect that continuous I&E bonds secured by corporate sureties are to be filed at the National Finance Center. Further, it is proposed to amend § 113.37 and § 113.39, Customs Regulations (19 CFR 113.37 and 113.39), to reflect that the Bureau of Government Financial Operations of the Department of the Treasury has been renamed the Financial Management Service.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2324, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

EXECUTIVE ORDER 12291

This document does not meet the criteria for a "major rule" as specified by E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

PAPERWORK REDUCTION ACT

The collections of information required by the Customs bond (Customs Form 301) and Part 113, Customs Regulations (19 CFR Part 113), have been cleared by the Office of Management and Budget pursuant to the Paper Reduction Act of 1980 (44 U.S.C. 3507) and assigned control number 1515-0144.

DRAFTING INFORMATION

The principal author of this document was Harold M. Singer, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 113

Air carriers, Customs duties and inspection, Exports, Freight, Imports, Surety bonds, Vessels.

PROPOSED AMENDMENTS

It is proposed to amend Part 113, Customs Regulations (19 CFR 113), as set forth below.

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113, Customs Regulations (19 CFR Part 113), continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624. Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

2. It is proposed to amend Part 113 by removing § 113.11 and marking it "Reserved".

3. It is proposed to revise the section heading, paragraphs (a), (b) introductory text, (b)(2), and (c), and adding introductory text, paragraphs (b)(3) and (d) of § 113.12 to read as follows:

§ 113.12 Bond application and approval.

Each person who is required by law, regulations or specific instruction to post a bond to secure a Customs transaction or multiple transactions, must submit the bond on Customs Form 301.

(a) *Single transaction bond.* Single transaction bonds whether secured by individual sureties, corporate sureties or by cash or obligations of the U.S., shall be filed with approved by the district director in the district in which the transaction will take place. To ensure that the revenue is adequately protected, the district director may require a person who will be engaged in a single Customs transaction relating to the importation or entry of merchandise to file a

written bond application which may be in the form of a letter. The application shall identify the value and nature of the merchandise involved in the transaction to be secured. When the proper bond in a sufficient amount is filed with the entry summary or, when the entry summary is filed at the time of entry, with the entry, an application will not be required.

(b) *Continuous importation and entry bonds secured by corporate sureties.* A bond application for a continuous importation and entry bond secured by a corporate surety may be in the form of a letter. The application shall be submitted by the applicant, through the corporate surety, to the Customs National Finance Center, Indianapolis, Indiana 46268.

(1) * * *

(2) *Application updates.* If the bond is approved based upon the application, whenever there is a significant change in the information provided under this paragraph, the principal on the bond shall submit a new application through the surety containing an update of the information required by paragraph (b)(1) of this section. The new application shall be filed no later than 30 days after the new facts become known to the principal.

(3) *Approval.* Continuous importation and entry bonds secured by corporate sureties shall be set in the amount stated in § 113.13(a). These bonds shall be filed at the National Finance Center under cover of a letter signed by an officer or authorized agent of the corporate surety who is authorized to accept and/or process claims thereunder, and attesting that a copy of the bond is on file with such surety or agent. Only one continuous bond for a particular activity will be authorized for each principal.

(c) *Continuous bonds secured by individual surety, cash or obligation of the U.S., or corporate surety for other than importation and entry.*

(1) *Application.* Any bond application for a continuous bond secured by a corporate surety other than an importation and entry bond or for a continuous bond secured by an individual surety or by cash or obligation of the U.S. shall be submitted to the appropriate district director. It may be in the form of a letter.

(2) *Approval.* If the transactions will occur in a single Customs district, the bond shall be submitted to and approved by the district director of the district in which the transactions will occur. If the transactions will occur in more than one district, the bond may be submitted to and approved by a district director in any of the districts in which the transaction will occur. Only one continuous bond for a particular activity will be authorized for each principal. Except for continuous bonds to secure erroneous drawback payments, the district director approving the bond will determine whether the bond is in proper form and whether it provides adequate security for the transactions. A continuous bond to secure erroneous drawback payments shall be submitted to the regional commissioner

who is to process the claims. The regional commissioner will determine the sufficiency of that bond's coverage. Upon approval, the district director or regional commissioner shall forward the bond to the National Finance Center for filing. A continuous entry and drawback bond shall be submitted to the regional commissioner. The regional commissioner, after approval of the bond, shall send it to the surety who shall transmit it to the National Finance Center. In the case of individual sureties, the district director shall be responsible for the continuancy of financial responsibility (see § 113.35(e)).

(i) Procedures for acceptance of continuous bonds with individual sureties are set forth in § 113.35.

(ii) Procedures for acceptance of continuous bonds with cash or obligations of the U.S. in lieu of surety are set forth in § 113.40.

(iii) Procedures relating specifically to the acceptance of bonds, notes or bills are set forth in Part 225 and Part 306, Subpart O, Financial Management Services Regulations (31 CFR Part 225 and 31 CFR Part 306, Subpart O).

(d) *Certification.* Any application submitted under this section shall be signed by the applicant and contain the following certification:

I certify that the factual information contained in this application is true and accurate and any information provided which is based upon estimates is based upon the best information available on the date of this application.

4. It is proposed to revise paragraph (a), the introductory language of paragraph (b), and paragraphs (c) and (d) of § 113.13 to read as follows:

§ 113.13 Amount of bond.

(a) *Minimum amount of bond.* The amount of any Customs bond shall not be less than \$100, except when the law or regulation expressly provides that a lesser amount may be taken. Continuous importation and entry bonds secured by corporate sureties shall be in the amount of at least \$100,000. For all bonds other than continuous importation and entry bonds secured by corporate sureties, fractional parts of a dollar shall be disregarded in computing the amount of a bond; the bond shall always be stated as the next highest dollar. For continuous entry and importation bonds secured by corporate sureties, if the principal has duties in excess of \$1,000,000 in the previous year, the bond shall be in the amount of 10 percent of those duties rounded to the nearest \$100,000.

(b) *Guidelines for determining amount of bond.* In determining whether the amount of a bond is sufficient, the National Finance Center, district director, or regional commissioner, as appropriate (see § 113.12), should at least consider:

* * * * *

(c) *Periodic review of bond sufficiency.* The National Finance Center shall periodically compare charges against each outstanding continuous importation and entry bond secured by corporate sureties with charges and claims against that bond. District directors and regional commissioners shall periodically review each bond approved in their respective district or region to determine whether the bond is adequate to protect the revenue and insure compliance with the law and regulations. If the National Finance Center, district director, or regional commissioner determines that the bond is inadequate, the principal shall be immediately notified in writing. The principal shall have 30 days from the date of notification to remedy the deficiency.

(d) *Additional security.* Notwithstanding the provisions of this section or any other provision of this chapter, if the National Finance Center, district director, or regional commissioner believes that acceptance of a transaction secured by a continuous bond would place the revenue in jeopardy or otherwise hamper enforcement of Customs laws or regulations, additional security shall be required.

5. It is proposed to revise § 113.15 to read as follows:

§ 113.15 Retention of approved bonds.

All approved continuous bonds shall remain on file at the National Finance Center. All single transaction bonds shall remain on file with the documents associated with the transaction for which they are given and retained by the appropriate Customs officer having jurisdiction over that transaction. The bond containing the agreement to pay court costs (condemned goods) (see § 113.72), shall be transmitted to the United States attorney, as required by § 608, Tariff Act of 1930, as amended (19 U.S.C. 1608). Other disposition of the bonds can occur only if so ordered by the Director, Carriers, Drawback and Bonds Division.

6. It is proposed to amend the first sentence of § 113.23(d) by inserting "National Finance Center, regional commissioner, or" between "the" and "district director".

7. It is proposed to revise the introductory text of § 113.24(a) to read as follows:

§ 113.24 Riders.

(a) *Types of riders.* The National Finance Center may accept the following types of bond riders.

* * * * *

8. It is proposed to revise § 113.27(a) and (b) to read as follows:

§ 113.27 Effective dates of termination of bond.

(a) *Termination by principal.* A request by a principal to terminate a bond shall be made in writing to the National Finance Center. The termination shall take effect on the date requested if the date is at least 10 business days after the date of receipt of the

request. Otherwise the termination shall be effective on the close of business 10 business days after the request is received. If no termination date is requested, the termination shall take effect on the tenth business day following the date of receipt of the request.

(b) *Termination by surety.* A surety may, with or without the consent of the principal, terminate a Customs bond on which it is obligated. The surety shall provide reasonable written notice to both the principal and, depending on where the bond was approved, either the National Finance Center or the district director or regional commissioner in the district or region where the bond was approved, of the intent to terminate. The written notice shall state the date on which the termination shall be effective and shall be sent to both Customs and the principal by certified mail, with a return receipt requested. Thirty days shall constitute reasonable notice unless the surety can show to the satisfaction of the Customs office where the bond was approved that lesser time is reasonable under the facts and circumstances.

* * * * *

9. It is proposed to revise § 113.32(a) to read as follows:

§ 113.32 Partnerships as principals.

(a) *Name of partners on the bond.* Unless written notice of the full names of all partners in the firm has been previously filed with the National Finance Center, or the district director or regional commissioner in the district or region where the bond was approved, the names of all persons composing the partnership shall appear in the body of the bond; for example, "Aaron A. Abel, Bertrand B. Bell and Charles C. Cole, composing the firm of Abel, Bell, Cole and Co."

* * * * *

10. It is proposed to amend the first sentence of § 113.33(c) by inserting "or National Finance Center" between "Commissioner" and "to".

11. It is proposed to amend § 113.33(d) by inserting "or National Finance Center" between "director" and "unless".

12. It is proposed to revise § 113.37(a) to read as follows:

§ 113.37 Corporate sureties.

(a) *Lists of corporations and limits of their bonds.* Treasury Department Circular 570 contains a list of corporations authorized to act as sureties on bonds, with the amount in which each may be accepted. The Circular shall be furnished annually to all district directors and to the National Finance Center by the Secretary of the Treasury. Unless otherwise directed by the Commissioner of Customs, no corporation shall be accepted as surety on a bond if not named in the current Circular as amended by Federal Register notice, and no bond shall be for a greater amount than the respective limit stated in the Circular, unless the excess is protected as pre-

scribed in § 223.11, Financial Management Service Regulations (31 CFR 223.11).

* * * * *

13. It is proposed to amend the second sentence of § 113.37(f) by removing "Bureau of Government Financial Operations" and inserting, in its place, "Financial Management Service."

14. It is proposed to amend § 113.37(g)(2) by revising the first sentence to read as follows:

(g) * * *

(2) *Filing.* The corporate surety power of attorney executed on Customs Form 5297 for continuous importation and entry bonds shall be filed at the National Finance Center. All other corporate surety powers of attorney shall be filed at a district office unless the district director permits filing at any port within the district, in which case the corporate surety power of attorney must be submitted in duplicate.

15. It is proposed to amend the last sentence of § 113.37(g)(4) by inserting "National Finance Center" between "the" and "district".

16. It is proposed to revise § 113.38(c) to read as follows:

* * * * *

§ 113.38 Delinquent sureties.

(c)(1) *Nonacceptance of continuous importation and entry bond secured by corporate surety by National Finance Center.* The National Finance Center may refuse to accept a continuous importation and entry bond secured by a corporate surety when the surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof. If the National Finance Center believes that a substantial question of law exists as to whether a breach of bond obligation has occurred, it should request internal advice under the provisions of § 177.11 of this chapter from the Director, Carriers, Drawback and Bonds Division, Customs Headquarters.

(2) *Nonacceptance of other bonds by district director or regional commissioner.* A district director or regional commissioner, as appropriate, may refuse to accept a bond secured by an individual or corporate surety when the surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amount thereof. If the district director believes that a substantial question of law exists as to whether a breach of bond obligation has occurred, he should request internal advice under the provisions of § 177.11 of this chapter from the Director, Carriers, Drawback and Bonds Division, Customs Headquarters.

(3) *Nonacceptance of bond upon instruction by Commissioner.* The Commissioner may, when circumstances warrant, issue instructions to the National Finance Center, district directors, and regional commissioners, that they shall not accept a bond secured by an individual or corporate surety when that surety, without just cause, is sig-

nificantly delinquent either in the number of outstanding bills or dollar amounts thereof.

(4) *Notice of surety.* The appropriate Customs officer may take the above actions only after the surety has been provided reasonable notice with an opportunity to pay delinquent amounts, provide justification for the failure to pay, or demonstrate the existence of a significant legal issue justifying further delay in payment.

(5) *Review and final decision.* After a review of any submission made by the surety under paragraph (c)(4) of this section, if the appropriate Customs officer is still of the opinion bonds secured by the surety should not be accepted, written notice of the decision shall be provided to the surety in person or by certified mail, return receipt requested, at least 5 days before the date that Customs will no longer accept the bonds of the surety. When notice is sent to the surety of the decision not to accept the surety's bonds, the appropriate Customs office shall notify the Director, Carriers, Drawback and Bonds Division, Customs Headquarters. The decision shall also be published in the Customs Bulletin.

(6) *Duration of decision.* Any decision not to accept a given surety's bond shall remain in effect for a minimum of 5 days or until all outstanding delinquencies are resolved, whichever is later.

(7) *Actions consistent with requirements.* Any action not to accept the bonds of a surety under paragraphs (c)(1), (2), and (3), of this section shall be consistent with the requirements of this section.

17. It is proposed to revise § 113.39 to read as follows:

§ 113.39 Procedure to remove a surety from Treasury Department Circular 570.

If the National Finance Center, a district director or regional commissioner is unsatisfied with a surety company because the company has neglected or refused to pay a valid demand made on the surety company's bond or otherwise has failed to honor an obligation on that bond, the National Finance Center, district director, or regional commissioner may take the following steps to recommend that the surety company be removed from Treasury Department Circular 570. The fact that collection proceedings have been, or are to be, started on a bond does not preclude use of this procedure if the National Finance Center, district director, or regional commissioner believes such action is warranted.

(a) *Report to Headquarters.* The National Finance Center, district director, or regional commissioner shall send the following evidence to Headquarters, Attn: Director, Carriers, Drawback and Bonds Division. If the report is from a district director it shall be submitted through the appropriate regional commissioner.

(1) A copy of the bond in issue;

(2) A copy of the entry or other evidence which shows that there was a default on the bond;

(3) A copy of all notices, demands or correspondence sent to the surety company requesting the honoring of the bond obligation;

(4) A copy of all correspondence from the surety company; and

(5) A written report of the facts known to the National Finance Center, district director, or regional commissioner showing the unsatisfactory performance by the surety company of the bond obligation(s).

(b) *Review by Headquarters.* The Director, Carriers, Drawback and Bonds Division, shall review submitted evidence and determine whether further action against the surety company is warranted. If it is determined that further action is warranted, a report recommending appropriate action will be submitted to the Fiscal Assistant Secretary, Department of the Treasury, as required by § 223.18(a), Financial Management Service Regulations (31 CFR 223.18(a)). The National Finance Center or district director and regional commissioner will be informed in writing of Headquarters action regarding their request for removal of the surety.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: September 14, 1987.

FRANCIS A. KEATING II,

Assistant Secretary of the Treasury.

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